

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED

April 10, 2012

In the Matter of PRIMM/MCCALL, Minors.

No. 305408

Wayne Circuit Court

Family Division

LC No. 10-496646-NA

Before: MARKEY, P.J., and MURRAY and SHAPIRO, JJ.

PER CURIAM.

Respondent-mother appeals as of right the trial court's order granting the care and custody of the two minor children to respondent-father after a review hearing pursuant to MCR 3.975(G)(1). We affirm.

Respondent-mother argues that the trial court abused its discretion in awarding the care and custody of the two minor children to their father because the children were in her care when they were initially removed, she was in compliance with her treatment plan, respondent-father was not involved in their lives before the removal and did not even acknowledge paternity until the children came under the court's jurisdiction, and the court did not hold a hearing before reaching its decision.

We review for an abuse of discretion the trial court's decision to place the minor children in the care and custody of their father as the controlling court rule, MCR 3.975(G)(1), provides the trial court with several discretionary options relative to placement decisions. *In re Forfeiture of Bail Bond*, 276 Mich App 482, 492; 740 NW2d 734 (2007). An abuse of discretion occurs when the trial court's decision falls outside the range of reasonable and principled outcomes. *In re Jones*, 286 Mich App 126, 130; 777 NW2d 728 (2009).

The trial court exercised jurisdiction over the minor children because their infant brother suffered broken ribs and a broken femur. Respondent-mother and the infant child's father, who was not respondent-father, had no explanation for the injuries. Experts opined that the injuries were the result of abuse involving significant force and that the infant would have experienced pain, swelling, and bruising as a result. Respondent-mother denied knowledge of how the injuries occurred and also denied knowledge of any pain, swelling, or bruising suffered by this child. After a trial on the issue, the trial court made a determination that the infant's father was the perpetrator of the injuries, that his rights should be terminated, and that it was in the best interests of the infant that his father's rights be terminated. Because respondent-mother had no explanation for the significant injuries to the infant and did not report that she was aware of him

experiencing any significant pain from apparent broken bones, the trial court could have also terminated her parental rights to the infant and to the two older children who are the subject of this appeal. The trial court, however, did not terminate respondent-mother's parental rights and gave her the opportunity to participate in a service plan. Respondent-father was also given the opportunity to participate in a service plan, including parenting classes and maintaining a legal source of income.

When the minor children were removed from respondent-mother's care, they were placed with their paternal grandmother and continued in this placement through the end of the proceedings. During this time, respondent-father lived in the same household. He was provided supervised visitation for the first six months and unsupervised visitation for the last three months that the children were under the court's jurisdiction. At the time of the review hearing, it was reported to the trial court that respondent-mother was in compliance with her service plan, and that the minor children were well cared for by respondents and their extended families, who were all assisting with providing care to the two children. Visitation by respondents had gone well. Respondent-mother visited with the minor children three to four times a week and her access to the minor children was very flexible; essentially she was allowed to visit whenever she desired. At this point, petitioner requested that the trial court put a custody order in place and that the case be dismissed, and the guardian ad litem agreed.

The report of the petitioner had been introduced into evidence as well as the report of the guardian ad litem. Respondent-mother did not make a request to examine the author of the study or the guardian ad litem. The trial court was unwilling to dismiss the case without a temporary determination regarding custody. Because the minor children had been living in appropriate conditions in their paternal grandmother's home with respondent-father, the trial court ordered the minor children to remain in his care and custody until further order of the court. The trial court invited the parties to address custody in the appropriate venue pursuant to a proceeding under the Child Custody Act.

Respondent-mother now argues on appeal that the trial court did not appropriately hold a "hearing" before making its custody determination. As respondent-mother points out, MCR 3.975 applies to post-dispositional procedures. The relevant portions provide:

(A) Dispositional Review Hearings. A dispositional review hearing is conducted to permit court review of the progress made to comply with any order of disposition and with the case service plan prepared pursuant to MCL 712A.18f and the court evaluation of the continued need and appropriateness for the child to be in foster care.

* * *

(E) Procedure. Dispositional review hearings must be conducted in accordance with the procedures and rules of evidence applicable to the initial dispositional hearing. The report of the agency that is filed with the court must be accessible to the parties and offered into evidence. The court shall consider any written or oral information concerning the child from the child's parent, guardian, legal custodian, foster parent, child caring institution, or relative with whom a

child is placed, in addition to any other relevant and material evidence at the hearing.

* * *

(G) Dispositional Review Orders. The court, following a dispositional review hearing, may:

- (1) order the return of the child home,
- (2) change the placement of the child,
- (3) modify the dispositional order,
- (4) modify any part of the case service plan,
- (5) enter a new dispositional order, or
- (6) continue the prior dispositional order.

The trial court's decision to temporarily place the children with respondent-father was within the range of principled outcomes. MCR 3.975(G)(1) and (2) provide the authority for the trial court's order, and the facts supported this action. Respondent-father had nothing to do with why the minor children came into care, and while under the jurisdiction of the court they were placed in the care of their paternal grandmother with whom respondent-father resided. No concerns were reported during respondent-father's six months of supervised contact with the minor children and three months of unsupervised contact. Indeed, as the trial court found, both families were working together to care for the children and respondent mother had visitation any time she desired. Other than the issue of proper placement, there was no reason for the trial court to retain jurisdiction. The trial court did not abuse its discretion when it ordered that the minor children remain in their current living situation, with respondent-father having responsibility for their care and custody, until further order of a court.¹

Affirmed.

/s/ Jane E. Markey
/s/ Christopher M. Murray
/s/ Douglas B. Shapiro

¹ The trial court recognized that issues regarding custody may arise in the future and told the parties that these issues could be addressed by filing a custody action in the appropriate division of the circuit court. Because this case was filed exclusively under the juvenile code, the trial court's reference to "custody" was in no way a custody decision for purposes of the Child Custody Act.